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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

COMPANY APPEAL NO.25 OF 2005

Shri Roy Thomas & Ors. ..Petitioners
v/s.
The Registrar of Companies
Maharashtra & others. ..Respondents

Mr. Rahul Oak for the Appellants

CORAM : ANOOP V. MOHTA,J.
DATED : 12th October, 2007

P.C.

The appellants, employees of the respodnent company have challenged the impugned order dated 28-1-2005 passed by the Company Law Board Western Region whereby the decision/resolution pursuant to provision of section 17 of the Companies Act, 1956 (for short) to shift/alter their place of business by substituting State of Tamilnadu instead of State of Maharashtra and further the change of Registered office of company to be situated in the State of Tamilnadu have been confirmed.

Therefore, present appeal.

2. In August 2004 respondent company filed application under section 17 of the Companies Act, 1956 for altering the situation clause of the Respondent company consequent to passing of a special resolution pursuant to the provisions of S.192A of the Companies Act, 1956

through postal ballot for shifting the registered office from the State of Maharashtra to the State of Tamil Nadu, before the Company Law Board Western Region Bench, Mumbai.

3. On 2-12-2004 the appellants filed their objections as the claim in respect of interalia backwages is pending before the 3rd Labour Court at Thane, in Reference (IDA)no. 54/2002 and Reference (IDA)no. 53/2002.

4. An alleged affidavit of the Respondent company undertaking to comply with the directions of the Labour Court filed before the Company LawBoard. The appellants have not received a copy of the said affidavit filed before the Company Law Board.

5. On 12-1-2005 alleged report submitted before the Company Law Board by the Registerar of Companies, Maharashtra, however, the Appellants had not received a copy of the said report dated 12-1-2005.

6. Learned counsel appearing for the appellant fairly conceded that as there was no stay to said order pursuance to the resolution, the respondent company office has already been shifted to Tamilnadu as per this order.

7. In view of this at this stage of the proceedings particularly after more than two and half years, I am not inclined to interfere with the order and especially when there isn o substantial question of law as involved as contemplated under section 10(f) of the Act in such matter.

8. Even otherwise as recorded in para-3 of the order, the Thane Labour Court initially had restrained the company from shifting the registered office from Mumbai, Maharashtra, however, the said order was quashed by the High Court. Therefore, there was no impediment of any kind in shifting their registered office in the State of Tamilnadu pursuance to resolution as referred above.

9. The Respondent company has also given undertaking that it would abide by the directions given if any by the Labour Court in accordance to various other claims filed by the appellant employees which are still pending.

10. The factual aspect of taking decision by the respondent company as recorded in para-5 of the impugned judgement further supports that they have complied with all the formalities and in the facts and circumstances of the case the shifting of the registered office of the

company is in the interest of company's development.

11. Even otherwise having once complied with the requirements and if the same has been approved by 99.99% votes and as the company had no business in the State of Maharashtra after closure of the Aurangabad unit and Bhandup unit and as the only unit functioning is in Chennai, the amendement and the resolution as sought to change the memorandum of association and to shift the registered office is in no way wrong. The whole action is infact within the framework of law and record.

12. Resultantly, the appeal is dismissed. No costs.

[ANOOP V. MOHTA,J.]